

complaint

Mr G complains that Welcome Financial Services Limited is pursuing him for a debt that he considers to be statute barred.

background

Mr G bought a car in 2004, financed by a hire purchase agreement with Welcome Financial Services. Mr G says the car needed many different repairs which Welcome refused to cover under warranty. Mr G felt the car was of unsatisfactory quality and stopped making his monthly repayments. Welcome subsequently defaulted the account (April 2006), terminated the agreement (July 2006), repossessed the car (September 2006), sold it at auction and applied the proceeds to Mr G's account. It holds Mr G liable for the outstanding balance of almost £8,000.

Our adjudicator explained that this Service was unable to consider any matters before April 2007. As such, we were unable to investigate Mr G's complaint about the quality of the car and could only consider whether Welcome had acted reasonably in pursuing Mr G for the outstanding debt. He concluded that Mr G had not acknowledged the debt for more than six years and that Welcome had not been in regular contact with him during that time. As such, he was not persuaded that it was reasonable for Welcome to ask Mr G to repay the debt and recommended that it stop all debt recovery action.

Welcome did not accept those conclusions so the matter was referred to me.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I uphold the complaint.

First, the extent of my power to consider complaints is set by the Financial Services and Markets Act 2000 and the Financial Service Authority's Dispute Resolution: Complaints (DISP) rules. As a result, this Service is not able to consider every complaint that is brought here.

This complaint stems from problems with a car bought via a hire purchase agreement (a consumer credit activity) with Welcome (a consumer credit licence-holder) in 2004. As our adjudicator explained, this Service did not acquire its powers to consider complaints about consumer credit activities carried on by consumer credit licence holders until April 2007. These powers are not retrospective. This means I can only consider whether Welcome acted unreasonably by continuing to pursue Mr G for the outstanding debt after April 2007.

The facts here are not disputed. Welcome asks Mr G to repay the outstanding balance on a hire purchase agreement. Mr G believes the debt to be statute barred; Welcome does not accept this.

Welcome's internal notes and a statement for the account show that:

- Mr G's last payment to the account was in January 2006.
- Welcome issued a default notice in April 2006.
- It terminated the account in July 2006.

- Welcome's only communication with Mr G after the account was terminated was a phone call in December 2007. During that call, Mr G told Welcome that he would not repay anything more due to the poor condition of the car when he bought it.
- Welcome sent Mr G demands for repayment between 2007 and 2012, however Mr G had changed address at some point and may not have received these demands.
- Mr G finally got in touch with Welcome in March 2013 and argued that the debt was statute barred.

Section 5 of the Limitation Act 1980 says: "*[a]n action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued*". So an important question here is what constitutes the cause of action (the point at which Welcome could take legal action against Mr G). Here, the cause of action is either the date of default or the date of termination. Taking the later date would mean Welcome had six years from July 2006 to take legal action against Mr G to recover the debt.

Part 2 of the Act considers when that time limit may be extended. If a debtor "*acknowledges the claim or makes any payment in respect of it the right shall be treated as having accrued on and not before the date of the acknowledgment or payment*". In other words, the six year time limit starts again from the date of acknowledgement or payment.

Welcome initially argued that Mr G's phone call in December 2007 was an acknowledgement of the debt. However, section 30 of the Act explicitly states that "*an acknowledgment must be in writing and signed by the person making it*". So I am not persuaded that Mr G acknowledged the debt after July 2006. Given this, I am satisfied that Welcome's ability to bring an action against Mr G expired at the end of July 2012 – that is, the debt is statute barred.

The Office of Fair Trading (OFT)'s debt collection guidance says "*businesses should not use unfair methods (including misrepresenting the legal position) if seeking to recover statute barred debt*". Unfair methods include:

- "*misleading debtors as to their rights and obligations (for example, stating or implying that debtors may be the subject of court action... when it is known, or reasonably ought to be known, that the relevant limitation period has expired)*"; and
- "*continuing to press a debtor for payment after he has stated that he will not be paying a debt because it is statute barred*".

I find that Welcome did both.

- It sent a default notice to Mr G in October 2012 headed 'Failure to read this letter may result in legal proceedings'. The letter threatened "*legal action for repayment of the debt*". (Given the account was already defaulted and terminated, I do not see why Welcome sent this letter.)
- Its internal notes show that Mr G argued the debt was statute barred in March 2013 but Welcome rejected this. It continued to demand payment from him and told him that he was being transferred to its 'recovery agents'.

The OFT lists another unfair practice as "*pursuing the debt under circumstances in which the debtor has heard nothing from a creditor during the relevant limitation period. If a creditor has been in regular contact with a debtor before the debt is statute barred, then we do not*

consider it unfair to continue to attempt to recover the debt". For the avoidance of doubt, I do not consider a single phone call in December 2007 and a series of letters sent by Welcome that went unanswered to be "*regular contact*".

In the circumstances, I am satisfied that Welcome reasonably ought to have known that the limitation period had expired. I find that it failed to meet the OFT's requirements by using unfair methods to try to recover a debt that was statute barred.

Although the OFT guidance notes that "*statute barred debt still exists and is therefore recoverable*", there seems to be little to be gained by Welcome continuing to try to recover the debt in this case. Mr G has made it clear he will not pay and Welcome should not continue to press him for payment. It follows that I do not consider it reasonable for Welcome to continue to ask Mr G to repay the outstanding debt.

my final decision

My final decision is that I uphold this complaint and order Welcome Financial Services Limited to ensure no further action is taken to recover this debt.

Simon Begley
ombudsman